

Original filed 6/19/06

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES BOYD,

Petitioner,

vs.

JAMES LARGE,

Respondent.

No. C 06-3317 RMW (PR)

ORDER OF DISMISSAL WITH
LEAVE TO AMEND

Petitioner, a prisoner currently incarcerated at Red Onion State Prison in Pound, Virginia, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court notes that the petition is incomplete, as it only contains three pages of a ten-page habeas form. Petitioner fails to allege what conviction he is challenging and whether he has exhausted his claims prior to filing the instant petition. Federal habeas petitioners are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509, 515-16 (1982); Duckworth v. Serrano, 454 U.S. 1, 3 (1981); McNeeley v. Arave, 842 F.2d 230, 231 (9th Cir. 1988).

1 The state's highest court must be given an opportunity to rule on the claims even if
 2 review is discretionary. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (petitioner
 3 must invoke "one complete round of the State's established appellate review process").
 4 Therefore, Petitioner cannot present claims to this Court which he has not first raised in
 5 the highest state court available, the Supreme Court of California, usually by direct appeal
 6 or by way of a state habeas petition.

7 The Court cannot fairly evaluate the petition in its present state. Accordingly, the
 8 Court will dismiss the instant petition with leave to amend and allow Petitioner an
 9 opportunity to file an amended petition to include the underlying conviction he is
 10 challenging, the location of the conviction, and whether he has exhausted his claims in the
 11 state court prior to filing the petition.

12 CONCLUSION

13 1. The instant petition is DISMISSED with leave to amend within **thirty (30)**
 14 **days** from the date of this order. The amended petition must include the caption and civil
 15 case number used in this order (C 06-3317 JF (PR)) and the words AMENDED
 16 PETITION on the first page. The amendment shall be on the Court's form for habeas
 17 petitions, **a copy of which is enclosed with Petitioner's copy of this order.**

18 Petitioner shall take care to write clearly and legibly, so the Court can read what he
 19 writes. He must clearly state what conviction he wishes to challenge. He must set out
 20 how he has exhausted his claims, that is, what he did to present them first to the highest
 21 state court available, which is the Supreme Court of California.

22 2. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
 23 the Court informed of any change of address and must comply with the Court's orders in
 24 a timely fashion. Failure to do so may result in the dismissal of this action for failure to
 25 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

26 IT IS SO ORDERED.

27 Dated: 6/16/06

28 
 JEREMY FOGEL
 United States District Judge

1 A copy of this order was mailed to the following:

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3 James Boyd
4 226451
5 Red Onion State Prison
6 P.O. Box 1900
7 Pound, VA 24279
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